



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON I. BROWN, DPA
ACTING DIRECTOR

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Date Mailed: September 28, 2023
MOAHR Docket No.: 23-002077
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent ██████ ██████ committed an intentional program violation (IPV). Pursuant to MDHHS' request and in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on August 30, 2023.

Dana Mikko, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Wendi Klier, Respondent, appeared on her own behalf.

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an IPV concerning Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving benefits for FAP?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. During the months of December 2016, February 2017, March 2017, April 2017, and June 2017 (FAP fraud period) Respondent received \$██████████ in FAP benefits. (Exhibit A, pp. 58-59)
2. On September ██████ 2016 Respondent submitted a Redetermination for FAP. Respondent reported no employment income. (Exhibit A, pp. 9-14)

3. On November █ 2016, Respondent applied for State Emergency Relief (SER) benefits. Respondent reported no employment income. (Exhibit A, pp. 15-51)
4. Respondent's signature on the Redetermination and Assistance Application certified that she read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, p. 14, and 33-51; Regulation Agent Testimony)
5. On September █ 2016, a Notice of Case Action was issued to Respondent approving FAP. The Notice included a budget summary showing no earned income was included. The Notice also reminded Respondent of the responsibility to report changes, including changes with income, within 10 days. A blank Change Report form was included. (Exhibit A, pp. 52-57)
6. A report from The Work Number documents that Respondent had earnings from employment with █ █ █ from October 28, 2016 through January 12, 2018. (Exhibit A, pp. 60-64)
7. Respondent was aware of the responsibility to accurately and timely report household income to the Department. (Exhibit A, 14 and 33-51; Regulation Agent Testimony)
8. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit A, pp. 10 and 22)
9. The FAP debt has been established by the Department. (Exhibit A, pp. 1 and 78)
10. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 4)
11. On April 11, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to timely report household income and as a result, received FAP benefits from December 1, 2016 to June 30, 2017 (FAP fraud period)¹ and State Emergency Relief (SER) benefits from November 7, 2016 to December 6, 2016 that Respondent was ineligible to receive. OIG requested that Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV. (Exhibit A, pp. 1-80)
12. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services as undeliverable.

¹ It is noted that the Department is only asserting that there was an overissuance for the months of December 2016, February 2017, March 2017, April 2017, and June 2017.

CONCLUSIONS OF LAW

MDHHS policies are contained in the MDHHS Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3031.

Intentional Program Violation

An IPV occurs when a recipient of MDHHS benefits intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR 273.16(c)(1). Effective October 1, 2014, MDHHS's OIG requests IPV hearings for cases where (1) the total repayment amount sought from Respondent for all programs combined is \$500 or more or (2) the total repayment amount sought from Respondent for all programs combined is less than \$500 but the group has a previous IPV, the matter involves concurrent receipt of assistance, the IPV involves FAP trafficking, or the alleged fraud is committed by a state government employee. BAM 720 (October 1, 2017), p. 12-13.

To establish an IPV, MDHHS must present clear and convincing evidence that the household member committed, and intended to commit, the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in "a firm belief or conviction as to the truth of the precise facts in issue." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (2010); see also M Civ JI 8.01. Evidence may be uncontroverted and yet not be clear and convincing; conversely, evidence may be clear and convincing despite the fact that it has been contradicted. *Smith* at 115. The clear and convincing standard is "the most demanding standard applied in civil cases." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995). For an IPV based on inaccurate reporting, MDHHS policy also requires that the individual have been clearly and correctly instructed regarding the reporting responsibilities and have no apparent physical or mental impairment that limits the ability to understanding or fulfill these reporting responsibilities. BAM 720, p. 1.

In this case, MDHHS alleges that Respondent committed an IPV based on a failure to report household income, resulting in receiving a greater amount of FAP benefits during the months of December 2016, February 2017, March 2017, April 2017, and June 2017 (FAP fraud period) than Respondent was eligible to receive.

The Department has established that Respondent was aware of the responsibility to timely report changes to the Department, such as changes with income. Households must report a

change in the source of income including starting or stopping a job or changing jobs; if the change in employment is accompanied by a change in income. 7 CFR 273.12(a)(1)(i)(B). Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. This includes changes with income. BAM 105 (October 1, 2016), pp. 11-13. Further, clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 9. Respondent's signature on the Redetermination and Assistance Application certified that she read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. The Notice of Case Action also reminded Respondent of the reporting responsibilities. (Exhibit A, pp. 14 and 33-51; Regulation Agent Testimony). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit A, pp. 10 and 22).

On September █ 2016 Respondent submitted a Redetermination for FAP. Respondent reported no employment income. (Exhibit A, pp. 9-14). On November █ 2016, Respondent applied for SER benefits. Respondent reported no employment income. (Exhibit A, pp. 15-51). On September 12, 2016, a Notice of Case Action was issued to Respondent approving FAP. The Notice included a budget summary showing no earned income was included. (Exhibit A, pp. 52-57).

A report from The Work Number documents that Respondent had earnings from employment with █ █ █ from October 28, 2016 through January 12, 2018. (Exhibit A, pp. 60-641). There is no evidence that Respondent timely reported the employment income to the Department. The Department determined that the failure to timely report the household income resulted in an OI of FAP benefits. (Exhibit A, pp. 65-75).

Respondent testified that the income was short term disability (STD) payments. Respondent asserted that she reported the STD payments to the Department, and she sent check stubs when she received checks. Sometimes Respondent faxed them and sometimes she dropped them off. Respondent spoke with the Department prior to the hearing to ask for copies of the check stubs. The Department indicated they were not in the case record. Petitioner provided letters from Unum regarding her STD claim dated between December 9, 2016 and November 6, 2017 as well as documentation regarding the termination of her employment with Bridgewater Interiors, LLC effective May 1, 2018 due to failing to return to work within three work days of the end of an absence. Respondent explained that in a split with her ex-husband three and a half years ago, she lost boxes of her paperwork, including documentation regarding the STD claim and payments. (Exhibit 1, pp. 1-15; Respondent Testimony)

The evidence establishes that Respondent failed to timely report household income to the Department within 10 days, as required by policy. The report from the Work Number states "data not provided" for many of the pay periods, which may be consistent with STD payments. However, regardless of whether the income was wages from hours worked, or STD payments, Respondent was required to timely report the income. There is insufficient

evidence to support Respondent's assertion that she submitted check stubs as she received the STD payments. There are no check stubs in Respondent's case record with the Department. The verified income from was utilized to re-determine FAP eligibility during the fraud period. Respondent's failure to timely and accurately report the income resulted in an OI of FAP benefits. Therefore, MDHHS has presented clear and convincing evidence that Respondent committed an IPV.

IPV Disqualification

An individual who is found pursuant to an IPV disqualification hearing to have committed a FAP IPV is disqualified from receiving benefits for the same program for 12 months for the first IPV, 24 months for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. As discussed above, MDHHS has established by clear and convincing evidence that Respondent committed an IPV. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 4). Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

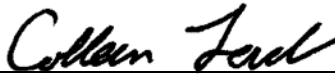
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. MDHHS has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is subject to a 12-month disqualification from FAP.

IT IS ORDERED that Respondent be personally disqualified from FAP for a period of 12 months.

CL/dm



Colleen Lack
Administrative Law Judge

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via-Electronic Mail :

Petitioner
OIG
**MDHHS-OIG-
HEARINGS@michigan.gov**

DHHS
Matt Zofchak
Shiawassee County DHHS
**MDHHS-Shiawassee-
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Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

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